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MONTANA LEGISLATIVE HISTORY

Chapter 101 19 91

Bill H 101 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Jan 18	✓ C	Hearing Date(s) Mar 06	✓ C
Jan 21	✓ C	_____	___ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out Jan 21	✓ C	Mar 06	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

HOUSE BILL NO. 101

INTRODUCED BY RUSSELL
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON ADULT AND JUVENILE DETENTION

IN THE HOUSE

JANUARY 5, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 7, 1991	FIRST READING.
JANUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 23, 1991	PRINTING REPORT.
JANUARY 25, 1991	SECOND READING, DO PASS AS AMENDED.
JANUARY 26, 1991	ENGROSSING REPORT.
JANUARY 28, 1991	THIRD READING, PASSED. AYES, 89; NOES, 7.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 29, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 7, 1991	SECOND READING, CONCURRED IN.
MARCH 8, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 11, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 12, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 101

INTRODUCED BY RUSSELL

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW SENTENCES OF IMPRISONMENT FOR DUI OFFENSES TO BE SERVED IN SECURE FACILITIES OTHER THAN COUNTY JAILS; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) A Except as provided in subsection (7), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The ~~jail~~ sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ sentence will pose a risk to the defendant's physical or mental well-being.

(2) ~~On~~ Except as provided in subsection (7), on a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. ~~Three~~ Except as provided in subsection (7), 3 days of the ~~jail~~ sentence may not be suspended unless the judge finds that the imposition of the ~~jail~~ sentence will pose a risk to the defendant's physical or mental well-being.

(3) ~~On~~ Except as provided in subsection (7), on the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, and by a fine of not less than $500 or more than $1,000. ~~Notwithstanding~~ Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the ~~jail~~ sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under

INTRODUCED BILL
HB 101

this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or

another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction ~~hereunder~~ under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another secure facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based

prerelease center as provided for in 53-1-203."

Section 2. Section 61-8-722, MCA, is amended to read:

"61-8-722. Penalty for driving with excessive blood alcohol concentration. (1) A Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, shall apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol

treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder under this section, then such the prior offense shall be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another secure

facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203."

-End-

CHAPTER NUMBER 31 EFFECTIVE DATE: 10/01/91

HB 99 INTRODUCED BY STANG
ALLOW A BICYCLIST TO RIDE ON
PAVED SHOULDER OF A ROADWAY
BY REQUEST OF DEPARTMENT OF HIGHWAYS

1/03	INTRODUCED		
1/03	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/07	FIRST READING		
1/17	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	76	22
1/24	3RD READING PASSED	85	12
	TRANSMITTED TO SENATE		
1/25	FIRST READING		
1/25	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/12	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED	49	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	79	11
3/18	3RD READING AMENDMENTS CONCURRED	84	13
3/22	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 169	EFFECTIVE DATE: 10/01/91	

HB 100 INTRODUCED BY RUSSELL
GARNISHMENT AND ATTACHMENT OF PROPERTY FOR
FAILURE TO PAY MINOR TRAFFIC FINES
BY REQUEST OF ADULT AND JUVENILE DETENTION,
JOINT INTERIM SUBCOMMITTEE ON

1/05	INTRODUCED
1/05	FISCAL NOTE REQUESTED
1/05	REFERRED TO JUDICIARY
1/07	FIRST READING
1/12	FISCAL NOTE RECEIVED
1/15	FISCAL NOTE PRINTED
1/18	HEARING
1/23	TABLED IN COMMITTEE

HB 101 INTRODUCED BY RUSSELL
SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS
BY REQUEST OF ADULT AND JUVENILE DETENTION,
JOINT INTERIM SUBCOMMITTEE ON

1/05	INTRODUCED		
1/05	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/18	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED AS AMENDED	95	3
1/28	3RD READING PASSED	89	7
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/07	2ND READING CONCURRED	49	0
3/08	3RD READING CONCURRED	49	0

	RETURNED TO HOUSE WITH AMENDMENTS		
3/11	2ND READING AMENDMENTS CONCURRED	81	18
3/12	3RD READING AMENDMENTS CONCURRED	91	
3/16	SIGNED BY SPEAKER		
3/16	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 101	EFFECTIVE DATE: 10/01/91	

HB 102 INTRODUCED BY RUSSELL

ALLOW MANDATORY DUI TREATMENT BY CERTIFIED CHEMICAL DEPENDENCY COUNSELORS

BY REQUEST OF ADULT AND JUVENILE DETENTION, JOINT INTERIM SUBCOMMITTEE ON

1/05	INTRODUCED		
1/05	REFERRED TO HUMAN SERVICES & AGING		
1/07	FIRST READING		
1/11	HEARING		
1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	93	3
1/28	3RD READING PASSED	88	8
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	49	0
3/09	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/16	SIGNED BY SPEAKER		
3/16	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 102	EFFECTIVE DATE: 10/01/91	

HB 103 INTRODUCED BY RUSSELL

PROHIBIT PRETRIAL DETENTION OF MENTALLY ILL PERSONS IN JAIL

BY REQUEST OF ADULT AND JUVENILE DETENTION, JOINT INTERIM SUBCOMMITTEE ON

1/05	INTRODUCED		
1/05	REFERRED TO HUMAN SERVICES & AGING		
1/05	FISCAL NOTE REQUESTED		
1/07	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/11	HEARING		
1/12	FISCAL NOTE PRINTED		
1/17	REVISED FISCAL NOTE REQUESTED		
1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/21	REVISED FISCAL NOTE RECEIVED		
1/22	REVISED FISCAL NOTE PRINTED		
1/25	2ND READING PASSED	75	23
1/25	TAKEN FROM ENGROSSING AND REREFERRED TO APPROPRIATIONS		
3/11	HEARING		
3/23	TABLED IN COMMITTEE		
3/28	TAKEN FROM TABLE IN COMMITTEE AND PLACED ON 2ND READING		
3/28	2ND READING PASSED	56	41
3/28	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING		
3/28	3RD READING PASSED	56	40

an important issue to her. She said she has never sentenced anybody to jail on first, second or third trafic offense. The court does have to address how the courts can pay for everything.

Closing by Sponsor:

REP. RUSSELL stated that jail overcrowding is a problem for many communities and this bill is one way that might have a small impact in helping that problem out.

HEARING ON HB 101
SERVE DUI SENTENCES IN SECURE FACILITIES OTHER THAN JAILS

Presentation and Opening Statement by Sponsor:

REP. RUSSELL, HOUSE DISTRICT 99, stated that this bill deals with the problem of jail overcrowding. HB 101 gives an option for serving time of DUI offenders. She stated that she will ask the committee to remove the word "secure" from the bill in executive session because it limits the options.

Proponents' Testimony:

Chris Christiaens, Director - Great Falls Pre-Release Center, stated that this is a sentencing option that helps relieve jail overcrowding. There is a savings to the county, directly, for the time the defendant would be spending in jail. The individual has been paying that but the Center has felt that it might be discriminatory in being able to serve only those with the ability to pay. For that reason, the Pre-Release Center Board has worked out a special arrangement where an individual who might be indigent would be able to come in ahead of time and work off community service at the rate of $4.00 for the cost of their DUI incarceration. He felt this bill was very necessary because there are judges who feel community pre-release centers do not fit the criteria for jail. Centers are more restrictive than jails. When an individual goes to a pre-release center to serve their time they can bring reading and writing material only. There is no television or radio. Mr. Christiaens stated that this is an excellent bill and asked the committee to look on it favorably.

Opponents' Testimony:

Mark Staples, Montana Taverns Association, stated that the concept of the bill is a great idea. He felt this should be an option for the defendant. The bill gives this as permissive sentence for the judge, but it might be unconstitutional and cause tremendous problems if a judge would only sentence a DUI offender to a 30 day treatment program. He felt if the defendant says he would prefer a pre-release center to incarceration in a

jail then it would be fine. The defendant should have the option if the judge has the option.

Craig L. Hoppe, Western Vice President - Montana Magistrates Association, gave written testimony opposing HB 101. EXHIBIT 3

Questions From Committee Members:

REP. MESSMORE asked REP. RUSSELL if she be willing to accept an amendment in regards to Mr. Staples testimony, in getting the consent of the defendant as to whether he would want to go to the pre-release center? REP. RUSSELL stated that she would be willing to discuss that in executive session.

REP. BROOKE asked Mr. Christiaens if he could describe what now exists in his program and what type of percentage of the funds does he receive? Mr. Christiaens stated that the defendant pays the $28.50. The pre-lease center receives the entire $28.50 to pay for meals and counseling.

CHAIRMAN STRIZICH asked Mr. Christiaens if it is understood that the counseling is required when they accept an offender into his program? Mr. Christiaens stated that it is something the center does as a benefit for anyone who is sent to the center. It is not understood.

REP. MEASURE asked Mr. Christiaens if it is the intent of the centers to house the individual that needs to be incarcerated for 6 months? Mr. Christiaens stated that pre-release centers are not a chemical dependency treatment program. He stated that if a judge wants to sentence someone to the center for 6 months and they had the ability to pay and were willing to do so, the center might work out some other type of opportunity through community service or work release. REP. MEASURE asked Mr. Christiaens if his center does chemical dependency counseling? Mr. Christiaens stated that they have counselors who talk about chemical dependency and the majority of their residents are chemically dependant. He stated that the center's counselors are not certified chemical dependency counselors but they understand the problems.

Closing by Sponsor:

REP. RUSSELL stated that this bill does give the state an option to jail overcrowding and hoped the committee could support it.

HEARING ON HB 148
ALLOW HOME ARREST IN LIEU OF INCARCERATION--MISD. & FELONY

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this is a bill dealing with home arrest and makes possible a new way of dealing with

EXHIBIT 2
DATE 1-18-91
HB 101

The Honorable Bill Strizich, Chairman, Judiciary Committee:

Re: HB 100 and HB 101

The Honorable Strizich and Respected Members of the Judiciary Committee:

As the Western Vice President of the Montana Magistrates Association, I would like to address some of our concerns regarding HB 100 and HB 101. I have spoken with a number of the judges in the Western District and we feel that jail is a useful tool:

1) We normally use the threat of jail as a last resort in an effort to assure compliance with the payment of a fine.

2) We use it as leverage for compliance for additional conditions that we may impose in addition to a fine.

3) We some times use jail as an option in sentencing, ie, community service or time in jail.

We feel if we lose this tool, our effectiveness as judges will be greatly diminished and our ability to enforce the traffic laws of the State of Montana will suffer as well as the general funds of the counties and cities we serve.

The legislature has already provided civil procedures to collect money owed on fines. Title 46 of the Criminal Procedure, Part 6, Procedure After Sentencing, states in:

46-18-601. Judgment in writing - lien. (1) The judgment shall be reduced to writing and signed by the judge.
(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

The recently enacted Montana Justice and City Court Rules of Civil Procedure, Rule 23 (B) provides for execution "At any time within 6 years from the entry of judgment or within the time extended pursuant to 25-13-102,..."

We feel that we have adequate civil remedies to collect on fines owed the courts. We do not want to lose the tool that makes the collection of fines and the compliance with court orders effective. We do not want to bog down an already busy docket with additional civil procedures where none are needed.

Other than the mandatory jail time, statutorily required for certain traffic offenses; ie, DUI's, driving while revoked and or suspended, etc. very few of the traffic offenders spend any time in jail. It is the knowledge that jail is a possibility for those who don't pay their fines, obey additional sentencing

EXHIBIT 3
DATE 1-18-91
HB 101

conditions or comply with community service that the system works as well as it does.

We realize that perhaps there are a few judges who seem to be a little more heavy handed in the issuance of jail time. I can not second guess these judges or their motives, some times they may be justified and some times not. The Montana Magistrates Association has taken great strides in an effort to standardize justice across the State of Montana. Our members have worked hard to establish a bond schedule that is uniform across the State. And from that schedule there has evolved a standardization of fine and sentences. It is the judge's duty in handing down any sentence to take into consideration certain criteria in formulating a meaningful sentence: 1) Is this the defendant's first, second, offense? 2) Is there by statute a minimum sentence required? 3) Is the defendant a juvenile? 4) Is the defendant or will the defendant be able to pay a fine? 5) Is there some alternative sentencing that will bring about a desired change in the defendant rather than a jail sentence? 6) Is there an obligation by the court to protect society from continued actions by the defendant that can be best served by a jail sentence?

These are just a few of the factors that we as judges weigh in fitting a sentence to an individual and the offense. To take away the use of a jail sentence would cause great harm to the effectiveness in the courts of the State of Montana, not only in their abilities to collect fines, but in compliance with additional conditions of sentencing or alternative sentencing involving community service or work release programs.

I would like to thank you for your time and consideration in this matter before us today.

Respectfully,

Craig L Hoppe

Craig L. Hoppe
Western Vice President, Montana Magistrates Association

VISITORS' REGISTER

House Judiciary COMMITTEE

BILL NO. HB# 101 DATE Jan. 18, 1991

SPONSOR Rep. Russell

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
B L Christiaens	Gt Falls	✓	
Mark Staples	Helena		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 21, 1991, at 9:05 a.m.

ROLL CALL

Members Present:
- Bill Strizich, Chair (D)
- Vivian Brooke, Vice-Chair (D)
- Arlene Becker (D)
- William Boharski (R)
- Dave Brown (D)
- Robert Clark (R)
- Paula Darko (D)
- Budd Gould (R)
- Royal Johnson (R)
- Vernon Keller (R)
- Bruce Measure (D)
- Charlotte Messmore (R)
- Linda Nelson (D)
- Jim Rice (R)
- Angela Russell (D)
- Howard Toole (D)
- Tim Whalen (D)
- Diana Wyatt (D)

Members Excused: Jessica Stickney and Thomas Lee

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 101

Motion: REP. RUSSELL MOVED HB 101 DO PASS.

Motion: REP. RUSSELL moved HB 101 be amended. EXHIBIT 1

Discussion:

REP. RUSSELL stated one of the amendments is on page 7 line 8 following the final sentence add, "Community-based pre-release

centers may accept or reject any defendant referred by the sentencing court". The other amendment is to delete the word "secure" from the language on page 1, line 7 and on page 6, line 25.

Vote: Motion carried.

Motion/Vote: REP. RUSSELL MOVED HB 101 DO PASS AS AMENDED. Motion carried.

EXECUTIVE ACTION ON HB #71

Motion: REP. MEASURE MOVED HB 71 DO NOT PASS.

Discussion:

REP. MEASURE stated he believes in the intent of the bill. You are not leaving much to the discretion of the judge. Some type of arbitrary determination has to be made as to what the ability is. I don't think there are many people that have the ability to pay. The judge could take away personal property from an individual to pay the costs of incarceration and I am afraid of the impact it would have on families.

REP. TOOLE stated he concurs with REP. MEASURE.

REP. BROWN stated he concurs with Rep. Measure. The courts already have this ability. What we are doing is setting public policy in the state of Montana. When the state sets public policy then there is the obligation of the state to cover these costs.

Vote: Motion failed 8 to 12. EXHIBIT 2

Motion: REP. BROWN MOVED TO REVERSE THE VOTE.

Vote: Motion carried. Outcome of vote was DO PASS.

EXECUTIVE ACTION ON HB #92

Motion: REP. GOULD MOVED HB 92 DO NOT PASS.

Discussion:

REP. BROWN stated he had talked with someone from the California Correction Center and they had stated they were having problems with the ignition device. He also stated he could foresee a group of kids running around town after 2 a.m. getting drunks to pay them to get into their car and get it started for them.

Motion/Vote: REP. RICE moved to amend HB 92 by excluding first

11:50 AM
1-22-91
JDB

HOUSE STANDING COMMITTEE REPORT

January 21, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 101 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 7.
Strike: "SECURE"

2. Page 4, line 18.
Page 6, line 25.
Strike: "secure"

3. Page 5, line 1.
Page 7, line 8.
Following: "53-1-203."
Insert: "The prerelease center may accept or reject a defendant referred by the sentencing court."

EXHIBIT 1
DATE 1-21-91
HB 101

Amendment to House Bill 101
First Reading Copy

Prepared by Department of Institutions
January 10, 1991

Page 7, line 8.
Following the final sentence add, "Community-based pre-release centers may accept or reject any defendant referred by the sentencing court".

stated subsection (4) on page 13, should include non-profit, and the LC# on page 25, Section 25, should be HB 119.

HEARING ON HOUSE BILL 101

Presentation and Opening Statement by Sponsor:

Representative Angela Russell, District 99, said HB 101 deals with 61-8-714, MCA, driving under the influence. She advised the Committee that Section 2 on page 5 of the bill deals with 61-8-722, MCA, driving with excess blood alcohol concentration.

Representative Russell said the Joint Interim Subcommittee on Juvenile and Adult Detention found that 26 percent of the jail population is DUI offenders. She commented that subsection (7) on page 4 of the bill says the court "may" order that jail terms be served in another facility. She told the Committee Sections 2 and 7 of the bill contain the same language.

Proponents' Testimony:

Mark Staples, Montana Tavern Association, said he participating in the hearing of HB 101 in the House Judiciary Committee, but did not see the amendment "with the concurrence of the defendant". He advised the Committee that he would support the bill with this amendment.

Opponents' Testimony:

There were no opponents of HB 101.

Questions From Committee Members:

Senator Mazurek asked why the defendant must concur. Mr. Staples replied that he served as state coordinator to revamp the jails, and believes defendants should have the right to oppose alternative sentencing.

Chairman Pinsoneault asked if HB 101 dovetails with other legislation on alternative sentencing. Mark Staples replied it does, but this bill has to do with where defendants are housed and seems to be directed at DUI offenders.

Senator Towe commented that the provision is in one place, but not in the second. Mark Staples replied it should be in both.

Senator Towe asked if there were any reason why defendant concurrence is not covered by the fact that the judge "may" order. Mark Staples replied it still gives the court the say, and asked if the Alpha House in Billings has a constitutionally mandated exercise yard.

Senator Halligan advised Senator Towe that when the Interim Subcommittee went to Yellowstone County, they discovered that DUI offenders were being put in halfway houses in violation of the law. He said the Interim Subcommittee is trying to give the courts the discretion.

Closing by Sponsor:

Representative Russell told the Committee that Chris Christians, Pre-Release Center, Great Falls, was a proponent when the bill was heard in the House Judiciary Committee, and was responsible for language inserted on page 5.

HEARING ON HOUSE BILL 102

Presentation and Opening Statement by Sponsor:

Representative Angela Russell, District 99, said HB 102 was requested by the Joint Interim Subcommittee on Adult and Juvenile Detention, and allows a choice of treatment programs for repeat offenders. She stated that, under current law, repeat offenders must receive treatment through Department of Institutions approved programs, and not Veterans Administration or Indian Health programs. Representative Russell commented that HB 425 in 1989 created a monopoly for state-approved programs.

Proponents' Testimony:

Darryl Bruno, Administrator, Drug and Alcohol Abuse Division, provided written testimony in support of HB 102 (Exhibit #6). He said there are currently 34 state-approved treatment programs and that 24 of those can also conduct DUI schools.

Mr. Bruno said the Division has established standards for chemical dependency education programs, and that he supports the bill as it is written. Mr. Bruno commented that there are also qualified chemical dependency counselors in private practice, and with the VA, Indian Health, and Ridgeview in Butte.

Patricia Bradley, Montana Magistrates Association, stated her support of the bill.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

There were no questions on the bill.

EXECUTIVE ACTION ON HOUSE BILL 221

Motion:

Discussion:

Amendments, Discussion, and Votes:

Recommendation and Vote:

Senator Brown made a motion that HB 221 BE CONCURRED IN. The motion carried unanimously. Senator Pinsoneault was asked to carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 101

Motion:

Senator Towe made a motion that HB 101 BE CONCURRED IN.

Discussion:

Amendments, Discussion, and Votes:

Senator Yellowtail questioned the defendant's right to choose where he or she would go to treatment.

Senator Yellowtail made a substitute motion to amend page 4, line 17, following "may" by striking" with the defendant's concurrence".

Senator Mazurek agreed with Senator Yellowtail, and asked if there were some way to guard against the court ordering treatment which is more costly than the defendant can afford.

Senator Towe commented that language in the bill says "if financially able".

Senator Yellowtail's motion to amend HB 101 carried with all members voting aye except Senators Grosfield, Crippen, and Doherty who voted no.

Recommendation and Vote:

Senator Halligan made a motion that HB 101 BE CONCURRED IN AS AMENDED. The motion carried unanimously. Senator Yellowtail was asked to carry the bill.

ADJOURNMENT

Adjournment At: 12:10 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

SENATE STANDING COMMITTEE REPORT

March 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 101 (third reading copy -- blue), respectfully report that House Bill No. 101 be amended and as so amended be concurred in:

1. Page 4, line 17.
Following: "may"
Strike: ", WITH THE DEFENDANT'S CONCURRENCE,"

Signed: _____
Richard Pinsoneault, Chairman

3-6-91
Amd. Coord.

SB 3-6 1:20
Sec. of Senate